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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XB043

Identification of Nations Whose Fishing Vessels are Engaged in Illegal, Unreported, or Unregulated Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Request for information.

SUMMARY: NMFS is seeking information regarding nations whose vessels are engaged in illegal, unreported, or unregulated (IUU) fishing, bycatch of protected living marine resources (PLMRs), and/or fishing activities in waters beyond any national jurisdiction that target or incidentally catch sharks. Such information will be reviewed for the purposes of the identification of nations pursuant to the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act).

DATES: Information should be received on or before April 30, 2012.

ADDRESSES: Information should be submitted to NMFS Office of International Affairs, Attn.: MSRA Information, 1315 East-West Highway, Silver Spring, MD 20910. E-mail address:

IUU.PLMR.Sharks@noaa.gov or fax (301) 713-2313.

FOR FURTHER INFORMATION CONTACT: Kristin Rusello, 301-427-8376.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) amended the Moratorium Protection Act (16 U.S.C.1826d-k) to require actions be taken by the United States to strengthen international fishery management organizations and address IUU fishing and bycatch of PLMRs. The Shark Conservation Act of 2010 (S.850) further amended the Moratorium Protection Act by requiring that actions be taken by the United States to strengthen shark conservation.

Specifically, the Moratorium Protection Act requires the Secretary of Commerce (Secretary) to identify in a biennial report to Congress those nations whose fishing vessels are engaged, or have been engaged at any point during the preceding two years, in IUU fishing. In this context, IUU fishing is defined (16 U.S.C. 1826j; 50 CFR 300.200-201) as:

(1) Fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, and bycatch reduction requirements;

(2) Overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international

fishery management organization or agreement, that has adverse impacts on such stocks; and

(3) Fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement.

In addition, the Secretary must identify in the biennial report those nations whose fishing vessels are engaged, or have been engaged in the previous calendar year in fishing activities either (1) in waters beyond any national jurisdiction that result in bycatch of a PLMR, or (2) beyond the U.S. exclusive economic zone (EEZ) that result in bycatch of a PLMR shared by the United States. In this context, PLMRs are defined as non-target fish, sea turtles, sharks, or marine mammals that are protected under U.S. law or international agreement, including the Marine Mammal Protection Act, the Endangered Species Act, the Shark Finning Prohibition Act, and the Convention on International Trade in Endangered Species of Wild Flora and Fauna. PLMRs do not include species, except sharks, managed under the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, or any international fishery management agreement. A list of species considered as PLMRs for this purpose

is available online at:

http://www.nmfs.noaa.gov/msa2007/docs/list_of_protected_lmr_act_022610.pdf.

Furthermore, the Shark Conservation Act requires that the Secretary of Commerce identify nations in a biennial report to Congress whose fishing vessels are engaged, or have been engaged during the calendar year previous to the biennial report in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks and the nation has not adopted a regulatory program to provide for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions.

The second biennial report to Congress was submitted in January 2011 and is available online at http://www.nmfs.noaa.gov/msa2007/docs/biennia_report_to_congress.pdf. The report identified six nations for IUU fishing.

The Moratorium Protection Act also requires the Secretary to establish procedures to certify whether each nation identified in the biennial report is taking the necessary actions to address IUU fishing, bycatch of PLMRs, and/or shark catch. If an identified nation fails to take such action and therefore fails to receive a positive certification, the fishing vessels of that

nation would be subject to trade restrictive measures under the High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1826a). Such measures could include denial of entry into U.S. ports and import prohibitions on certain fisheries products. On January 12, 2011, NMFS published a final rule (76 FR 2011) to implement both the identification and certification procedures for IUU fishing and bycatch of PLMRs. That final rule is available online at <http://www.gpo.gov/fdsys/pkg/FR-2011-01-12/pdf/2011-507.pdf>. The rule provides information regarding the identification process and how the information received will be used in that process.

In fulfillment of its requirements under the Moratorium Protection Act, NMFS is preparing the third biennial report to Congress, which will identify nations whose fishing vessels are engaged in IUU fishing or fishing practices that result in bycatch of PLMRs or shark catch in waters beyond any national jurisdiction without a regulatory program comparable to the United States. NMFS is soliciting information from the public that could assist in its identification of nations engaged in activities that meet the criteria described above for IUU fishing, PLMR bycatch, or shark catch in waters beyond any national jurisdiction. Some types of information that may prove useful to NMFS include:

- Documentation (photographs, etc.) of IUU activity or fishing vessels engaged in PLMR bycatch or catch of sharks on the high seas;
- Fishing vessel records;
- Trade data supporting evidence that a nation's vessels are engaged in shark catch;
- Reports from off-loading facilities, port-side government officials, enforcement agents, military personnel, port inspectors, transshipment vessel workers and fish importers;
- Sightings of vessels on RFMO IUU vessel lists
- RFMO catch documents and statistical document programs;
- Nation's domestic regulations for bycatch and shark conservation and management;
- Appropriate certification programs;
- Action or inaction at the national level, resulting in non-compliance with RFMO conservation and management measures, such as exceeding quotas or catch limits, or failing to report or misreporting data of the nation's fishing activities; and
- Reports from governments, international organizations, or nongovernmental organizations.

NMFS will consider all available information, as appropriate, when making a determination whether or not to

identify a particular nation in the biennial report to Congress. As stated previously, NMFS is limited in the data it may use as the basis of a nation's identification. This information includes IUU fishing activity in 2011 and 2012, bycatch of PLMRs in 2012, and shark fishing activity in waters beyond any national jurisdiction in 2012. Information should be as specific as possible as this will assist NMFS in its review. NMFS will consider several criteria when determining whether information is appropriate for use in making identifications, including:

- Corroboration of information;
- Whether multiple sources have been able to provide information in support of an identification;
- The methodology used to collect the information;

- Specificity of the information provided;
- Susceptibility of the information to falsification and alteration; and
- Credibility of the individuals or organization providing the information.

Dated: March 26, 2012.

Cheri McCarty

Acting Director, Office of International Affairs,
National Marine Fisheries Service.

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